

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Steven Lee Hewitt, Sr.,)	C/A No. 0:09-2122-HMH-PJG
)	
Plaintiff,)	
)	
vs.)	REPORT AND RECOMMENDATION
)	
Sgt. Joanne Clary; Officer McKnight; Officer)	
Joseph Wilson; and Officer James Dyre,)	
)	
Defendants.)	
_____)	

The plaintiff, proceeding *pro se*, brought this action seeking relief pursuant to 42 U.S.C. § 1983. On April 19, 2010, the defendants filed a motion to dismiss. (Docket Entry 32.) By order of this court filed April 20, 2010, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the dismissal and summary judgment procedures and the possible consequences if he failed to respond adequately.¹ (Docket Entry 33.) The plaintiff was specifically advised that if he failed to respond adequately, the defendants' motion may be granted, thereby ending his case.

Notwithstanding the specific warning and instructions set forth in the court's Roseboro order, the plaintiff has failed to respond to the motion. As such, it appears to the court that he does not

¹The court notes that the mailing containing this order was returned as undeliverable and stamped "no longer at this facility." (See Docket Entry 36-1.) The court further observes that the plaintiff was specifically advised of his obligation to keep the court apprised of his current address and the consequences of failing to do so. (See Docket Entry 5.)

PJG

oppose the motion and wishes to abandon this action. Therefore, the plaintiff meets all of the criteria for dismissal under Chandler Leasing Corp. v. Lopez, 669 F.2d 919 (4th Cir. 1982).²

Also pending in this matter is Hewitt's "motion for relief," filed December 11, 2009, in which he moves for default judgment against Defendants Wilson and Dyre. (Docket Entry 21.) The Clerk of Court made an entry of default against these two defendants on November 9, 2009.³ (Docket Entry 15.) The defendants filed a motion to set aside default on March 31, 2010 (Docket Entry 27), which was granted for good cause shown and without opposition filed on May 5, 2010 (Docket Entry 37).

RECOMMENDATION

Accordingly, it is recommended that this action be dismissed with prejudice for lack of prosecution and for failure to comply with an order of the court. See Davis v. Williams, 588 F.2d 69, 70 (4th Cir. 1978); Ballard v. Carlson, 882 F.2d 93, 95 (4th Cir. 1989) (stating that magistrate judge's prior explicit warning that a recommendation of dismissal would result from the plaintiff failing to obey his order was proper grounds for the district court to dismiss the suit when the plaintiff did not comply despite the warning), cert. denied sub nom, Ballard v. Volunteers of America, 493 U.S. 1084 (1990); Fed. R. Civ. P. 41(b). In light of the court's order granting the defendants' motion to set aside default, the court recommends that Hewitt's motion for relief be

²He is personally responsible for proceeding in a dilatory fashion, the Defendants are suffering prejudice by continuing to have these claims clouding their careers and continuing to incur legal expenses, and no sanctions appear to exist other than dismissal given the previous warnings and extensions provided. Chandler Leasing Corp., 669 F.2d at 920.

³The Clerk of Court later made an entry of default against Defendants Clary and McKnight on March 23, 2010. (Docket Entry 22.) Hewitt has not moved for default judgment against Defendants Clary and McKnight.

denied. (Docket Entry 21.) Additionally, the court recommends that any other pending motions (Docket Entry 32) be terminated.


Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

May 25, 2010
Columbia, South Carolina

The parties are referred to the Notice Page attached hereto.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).